

IDEAL SERVICE STATION

APRIL 3 (legislative day, MARCH 30), 1942.—Ordered to be printed

Mr. CAPPER, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 736]

The Committee on Claims, to whom was referred the bill (H. R. 736) for the relief of Ideal Service Station, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1779, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1779, 77th Cong., 1st sess.]

The War Department, in a report to the committee dated July 5, 1941, recommends:

"It is, however, the view of the Department that, so far as the item of \$1,740 for the rental of automobiles is concerned, the vehicles in question were rented by the Ideal Service Station in good faith and were used solely for necessary Government business, and that the said company should be compensated in the above-mentioned amount for the services so rendered."

Your committee concur in the findings and recommendation of the War Department and recommend that the bill, as amended, do pass. Appended hereto is the report of the War Department, together with other pertinent evidence.

WAR DEPARTMENT,
Washington, July 5, 1941.

Hon. DAN R. McGEHEE,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. McGEHEE: The War Department will interpose no objection to the enactment of H. R. 736, Seventy-seventh Congress, provided that it be so amended as to pay to the Ideal Service Station, of Honolulu, T. H., the sum of \$1,740 only in full satisfaction of all claims against the United States for services on account of a contract for the rental of passenger-carrying automobiles to the United States Army, entered into between July 13 and October 31, 1936, omitting the award of \$160.76 stipulated in the bill for repairs during said period on the passenger-carrying automobiles so rented.

In the construction of the Aliamanu ammunition-storage project, Territory of Hawaii, it was necessary to provide a certain number of light motor vehicles for the transportation of small supplies, and, when required, for transportation of supervisory personnel and repair crews from one end of the job to the other. The project was located approximately 4 miles from the district engineer's central warehouses and about the same distance from the commercial supply houses. To insure completion of the project on time, it was necessary to work simultaneously at widely separated localities. The distance from one end of the construction site to the other was approximately 2 miles. Government-owned vehicles for the required purpose were not available locally. Attempts of the district engineer to rent light motortrucks from commercial sources pending the delayed receipt of similar equipment from the mainland were without success due to exorbitant and prohibitive rates and also to the fact that a sufficient number of this type of vehicles were not available. In view of this situation, the district engineer considered that it was necessary, in the interest of prompt, economical, and efficient prosecution of the work, to rent at a reasonable rental rate passenger-carrying vehicles which could be used in lieu of light trucks. The lack of such transportation facilities in this case would have resulted in a partial, if not complete, cessation of work, thereby jeopardizing the possibility of completing the project within the scheduled time.

"A number of motor vehicles were hired by the district engineer, among which were three Ford passenger-carrying automobiles from July 13 to 31, 1936, and seven Ford passenger-carrying automobiles for August 1936. The total amount covering the rental of these cars for this period of time, \$670, was paid by a disbursing officer of the United States Army, but later collected back from the company on the grounds that the appropriation 'Seacoast defenses, insular departments, 1937,' was not available for the rental of passenger-carrying vehicles. Seven additional passenger-carrying automobiles were hired for the period September 1 to October 31, 1936, at a total rental of \$1,070, which amount remains unpaid. A claim was submitted by the Ideal Service Station to the Comptroller General of the United States, for the amount in question, \$1,740, which claim was disallowed on the grounds that section 5 of the act of July 16, 1914 (38 Stat. 508), prohibited the hire of motor-propelled passenger-carrying vehicles unless such hire was specifically authorized by law. It was further held that irrespective of the fact that the vehicles in question were obtained primarily for the transportation of small supplies, the character of the vehicles as shown by their construction and design was the controlling factor for determination and not their intended use. Since no authority of law under the appropriation 'Seacoast defenses, insular department, 1937,' authorized the payment of rental for such vehicles, the claim was necessarily disallowed."

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"It is, however, the view of the Department that, so far as the item of \$1,740 for the rental of automobiles is concerned, the vehicles in question were rented by the Ideal Service Station in good faith and were used solely for necessary Government business, and that the said company should be compensated in the above-mentioned amount for the services so rendered."

Your committee concur in the findings and recommendation of the War Department and recommend that the bill, as amended, do pass. Appended hereto is the report of the War Department together with other pertinent evidence.

WAR DEPARTMENT,
Washington, July 5, 1941.

HON. DAN R. McGEHEE,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

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In the construction of the Aliamanu ammunition storage project, Territory of Hawaii, it was necessary to provide a certain number of light motor vehicles for

the transportation of small supplies, and, when required, for transportation of supervisory personnel and repair crews from one end of the job to the other. The project was located approximately 4 miles from the district engineer's central warehouses and about the same distance from the commercial supply houses. To insure completion of the project on time, it was necessary to work simultaneously at widely separated localities. The distance from one end of the construction site to the other was approximately 2 miles. Government-owned vehicles for the required purpose were not available locally. Attempts of the district engineer to rent light motor trucks from commercial sources pending the delayed receipt of similar equipment from the mainland were without success due to exorbitant and prohibitive rates and also to the fact that a sufficient number of this type of vehicles were not available. In view of this situation, the district engineer considered that it was necessary in the interest of prompt, economical, and efficient prosecution of the work to rent at a reasonable rental rate passenger-carrying vehicles which could be used in lieu of light trucks. The lack of such transportation facilities in this case would have resulted in a partial, if not complete, cessation of work, thereby jeopardizing the possibility of completing the project within the scheduled time.

A number of motor vehicles were hired by the district engineer, among which were three Ford passenger-carrying automobiles from July 13 to 31, 1936, and seven Ford passenger-carrying automobiles for August 1936. The total amount covering the rental of these cars for this period of time, \$670, was paid by a disbursing officer of the United States Army, but later collected back from the company on the grounds that the appropriation "Seacoast defenses, insular departments, 1937," was not available for the rental of passenger-carrying vehicles. Seven additional passenger-carrying automobiles were hired for the period September 1 to October 31, 1936, at a total rental of \$1,070, which amount remains unpaid. A claim was submitted by the Ideal Service Station to the Comptroller General of the United States, for the amount in question, \$1,740, which claim was disallowed on the grounds that section 5 of the act of July 16, 1914 (38 Stat. 508), prohibited the hire of motor-propelled passenger-carrying vehicles unless such hire was specifically authorized by law. It was further held that irrespective of the fact that the vehicles in question were obtained primarily for the transportation of small supplies, the character of the vehicles as shown by their construction and design was the controlling factor for determination and not their intended use. Since no authority of law under the appropriation "Seacoast defenses, insular departments, 1937," authorized the payment of rental for such vehicles, the claim was necessarily disallowed.

The item of \$160.76, payment of which is also provided for in the bill, for repairs during the period between July 13 and October 31, 1936, represents the cost of missing fenders and tires and necessary repairs when the cars rented by the Government were returned to the owner upon completion of rental. In this connection there is quoted below the following provision from the rental contract:

"(1) *Maintenance, upkeep, and repairs.*—All necessary repairs to maintain the vehicles in good operating condition, shall be made by the successful bidder during the entire period of the contract to be entered into. The decision of the contracting officer as to necessary repairs shall be final and conclusive. The contractor shall make available another vehicle in case the car is returned to the contractor for repairs, or in the event that replacement is not available, no rental will be paid for such period in excess of the (1) day while the car is undergoing such repairs."

In view of the above-quoted provision, it is the view of the War Department that no liability rests on the United States to make reimbursement for such repairs.

It is, however, the view of the Department that, so far as the item of \$1,740 for the rental of automobiles is concerned, the vehicles in question were rented by the Ideal Service Station in good faith and were used solely for necessary Government business, and that the said company should be compensated in the above-mentioned amount for the services so rendered.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

COMPTROLLER GENERAL OF THE UNITED STATES,

Washington, April 1, 1941.

Hon. DAN R. McGEHEE,
*Chairman, Committee on Claims,
 House of Representatives.*

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of March 15, 1941, acknowledged March 17, requesting a report on the bill H. R. 736, entitled "A bill for the relief of Ideal Service Station," which provides as follows: "That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$1,740 to Ideal Service Station, of Honolulu, Territory of Hawaii, in full satisfaction of all claims against the United States for services on account of a contract for the rental of passenger-carrying automobiles to the United States Army, entered into between July 13 and October 31, 1936, and \$160.76 for repairs during this period on the passenger-carrying automobiles so rented: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The claim of the Ideal Service Station in the amount of \$160.76 for repairs to the vehicles here involved has not been presented to this office and consequently no information is available here regarding that portion of the claim. It is suggested that the facts with respect to said claim may be obtained from the War Department.

The claim of \$1,740 is for rental of automobiles to the district engineer, War Department, Honolulu, T. H., during the period July 13 to October 31, 1936, for use in connection with the construction of the Aliamanu ammunition storage project, and consists of—

(a) An amount of \$135 covering rental of three Ford passenger-carrying vehicles from July 13 to 31, 1936.

(b) An amount of \$1,605 covering rental at \$535 per month of seven Ford passenger-carrying vehicles for the months of August, September, and October 1936, under contract No. W-414-eng-242, dated August 1, 1936.

Of the total of \$1,740 so claimed, \$670 was paid to the claimant by Maj. Herbert Baldwin, Finance Department, United States Army, but later was collected by the disbursing officer from amounts otherwise due the claimant for the stated reason that the appropriation "Seacoast defenses, insular departments, 1937" under which payment was made, was not available for the rental of passenger-carrying vehicles.

The said claim for \$1,740 was disallowed in its entirety by decision of this office dated January 17, 1938, for the reason, in brief, that the appropriation involved contained no provision for the purchase, maintenance, or operation of passenger-carrying vehicles; that there appeared to be no other provision of law authorizing the use of said appropriation for such purposes; and that, therefore, the involved rental of a passenger-carrying vehicle was in contravention of section 5 of the act of July 16, 1914 (38 Stat. 508), which provides, in pertinent part, as follows:

"No appropriation made in this or any other Act shall be available for the purchase of any motor-propelled or horse-drawn passenger-carrying vehicle for the service of any of the executive departments or other Government establishments, or any branch of the Government service, unless specific authority is given therefor, and after the close of the fiscal year nineteen hundred and fifteen there shall not be expended out of any appropriation made by Congress any sum for purchase, maintenance, repair, or operation of motor-propelled or horse-drawn passenger-carrying vehicles for any branch of the public service of the United States unless the same is specifically authorized by law, * * *"

The appropriation involved, "Seacoast defenses, insular departments, 1937" (49 Stat. 1297), provides in pertinent part:

"For all expenses incident to the preparation of plans and the construction, purchase, installation, equipment, maintenance, repair, and operation of fortifications and other works of defense, and their accessories, including personal services,

ammunition storage, maintenance of channels to submarine-mine wharves, purchase of lands and rights-of-way as authorized by law, and experimental, test, and development work, as follows:

* * * * *

"Insular departments, \$3,379,511, of which not less than \$3,141,780 shall be available exclusively toward defense projects in the Hawaiian department;"

Notwithstanding the fact that the appropriation did not provide for the purchase, maintenance, or operation of passenger-carrying vehicles, the district engineer, in letter of March 1, 1937, recommended favorable consideration of this claim, together with two similar claims of other claimants relating to the same construction project, for reasons stated as follows:

"4. In the construction of the Aliamanu ammunition storage project by hired labor and Government plant, it has been necessary to provide a certain number of light motor vehicles for transportation of small supplies and which, when required, may also be used to transport supervisory personnel and repair crews from one end of the job to the other. This project, which covers an area approximately $\frac{3}{4}$ by $1\frac{1}{2}$ miles, includes the construction of about 3 miles of roads, 35 magazines, 135 galleries, the installation of water and electrical systems, and erection of man-proof fence, and a number of miscellaneous structures. It is located approximately 4 miles from the district central warehouses and about the same distance from the commercial supply houses. To insure the completion of the project on time, it is necessary to carry on work simultaneously at widely separated localities. The distance from one end of the construction site to the other is approximately 2 miles. The work originally planned as a 2-year job to be done by contract is now required, due to limitation of funds, to be completed within 1 year. Unless every possible means of speeding up and maintaining the highest efficiency in the construction schedule throughout the three 8-hour shifts is to be utilized, the job could not have been completed, as will now be the case, within the time allotted.

"5. Government-owned vehicles for the required purpose were not available locally. Attempt to rent light motortrucks from commercial sources pending the delayed receipt of similar equipment from the mainland was without success due to exorbitant and prohibitive rates and also the fact that sufficient number of this type of vehicles was not available. In view of this situation, it was necessary and in the interest of prompt, economical, and efficient prosecution of the work to rent at a reasonable rental rate passenger-carrying vehicles which could be used in lieu of light trucks. The lack of such transportation facilities in this case would result in a partial, if not complete, cessation of work, thereby jeopardizing the possibility of completing the project within the scheduled time.

"6. In view of the foregoing and the fact that the passenger cars for which payment of rental is now suspended were obtained primarily for the transportation of supplies and were rented because light trucks were not available, and since the Government has received the services of these vehicles, it is requested that favorable consideration be given the attached claims and that amounts due be certified for payment."

While the district engineer states that the passenger cars here involved were obtained primarily for transportation of supplies, in lieu of light trucks which were not available, his statement shows that they were intended, also, for use in transporting passengers—that is to say, supervisory personnel and repair crews. But, be that as it may, it has been held consistently that the question whether a vehicle is passenger-carrying within the prohibition of the act of July 16, 1914, supra, must be determined from the character of the vehicle as shown by its construction and design, and not from its intended use (21 Comp. Dec. 116; 14 Comp. Gen. 367; 15 id. 451).

With respect to the asserted necessity for rental of passenger-carrying vehicles for use on the Aliamanu ammunition storage project, it is to be observed that the 1914 act, supra, does not provide for or permit any exception from its requirement on the basis of necessity or otherwise. Hence, if this claimant is to receive compensation for the use of its automobiles the enactment of legislation to make funds available therefor would appear to be necessary. If the bill is to be favorably considered for enactment, it is suggested, in order that the statements in the bill may conform with the facts, that there be substituted for the words "entered into between" in lines 9 and 10 the words "for the period."

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States

HONOLULU, T. H., March 22, 1940.

COMPTROLLER GENERAL,
Washington, D. C.

DEAR SIR: From October 31, 1936, to the present date, we have repeatedly sought reimbursement for services rendered the United States District Engineer Office. Repeated statements and bills have been forwarded to the Finance Office, Honolulu, T. H., and to the District Engineer Office, Honolulu, T. H., covering rental of our automobiles used on the Aliamanu ammunition storage project. Total amount due us is \$1,740, apportioned as follows:

Purchase order 37-325, auto rental for July 1936-----	\$135
Purchase order 37-336-(1), auto rental for August 1936-----	535
Purchase order 37-336-(2), auto rental for September 1936-----	535
Purchase order 37-336-(3), auto rental for October 1936-----	535
Total-----	1,740

Verification of nonpayment for above-mentioned services may be obtained from the District Engineer Office, Honolulu, T. H. We respectfully request that your earliest consideration be given to this matter of 4 years' standing.

Very truly yours,

IDEAL SERVICE STATION,
By MARTIN HOOK, Manager.

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Comptroller General of the United States